

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

B.R., (d.o.b. April 2002) by and through her	)	CASE NO.: 4:13-CV-00907
father and next friend, MICHAEL	)	
RUBESICH, et al.,	)	
	)	JUDGE JOHN R. ADAMS
Plaintiffs,	)	
	)	<b><u>DEFENDANTS' MOTION FOR</u></b>
vs.	)	<b><u>SUMMARY JUDGMENT</u></b>
	)	
BRIAN McGIVERN, et al.,	)	
	)	
Defendants.	)	

Now come Defendants City of Canfield, Chief of Police Charles Colucci, Assistant Chief Scott Weamer, Detective Brian McGivern and Officer Timothy Lamping, by and through counsel, Mazanec, Raskin & Ryder Co., L.P.A., and, pursuant to Civil Rule 56, hereby move the Court for judgment in their favor with respect to Plaintiffs' claims against them. The undisputed material facts show that Defendants are entitled to judgment as a matter of law. Summary judgment is proper in this case.

The present case arises out of allegations of false arrest and malicious prosecution surrounding the arrest and prosecution of Plaintiff B.R. for several counts of rape, gross sexual imposition and attempted rape. The allegations against B.R., a minor, were investigated by the City of Canfield Police Department, particularly by Detective Brian McGivern, under the supervision of Assistant Chief of Police Scott Weamer and Chief of Police Charles Colucci. Plaintiffs' Second Amended Complaint contains eleven counts, including alleged violations of her Fourth Amendment Rights, her Fourteenth Amendment Rights, and state law claims for malicious prosecution, abuse of process, false imprisonment, sham legal process, battery, intentional infliction of emotional distress, loss of consortium and spoliation. Plaintiffs' claims

lack merit as Defendants possessed probable cause for the arrest and prosecution of Plaintiff B.R. In addition, they were acting on the advice of and in consultation with the prosecutor. Further, the individual Defendants are entitled to qualified immunity. All Defendants are immune from Plaintiffs' state law claims pursuant to Ohio Revised Code Chapter 2744. Plaintiffs' *Monell* claim is barred as there was no underlying constitutional violation and further there is no evidence that any policy or procedure caused the alleged constitutional violation. The basis for this motion is fully set forth in the Memorandum of Law, attached hereto and incorporated by reference herein, the depositions of Anissa Modarelli, Kimberly Woods, Charles Colucci, Scott Weamer, Brian McGivern, Timothy Lamping, Mark Meshula, David Blystone, Donald Slater, and Thomas Parker and the taped interviews of the juveniles, all of which are filed herewith.

Based upon the foregoing, Defendants City of Canfield, Chief of Police Charles Colucci, Assistant Chief Scott Weamer, Detective Brian McGivern, and Officer Timothy Lamping respectfully request that the Court enter an Order granting judgment in their favor with respect to the claims against them.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

s/Tami Z. Hannon

JOHN T. MCLANDRICH (0021494)

TAMI Z. HANNON (0079812)

100 Franklin's Row

34305 Solon Road

Cleveland, OH 44139

(440) 248-7906

(440) 248-8861 – Fax

Email: [jmclandrich@mrrlaw.com](mailto:jmclandrich@mrrlaw.com)

[thannon@mrrlaw.com](mailto:thannon@mrrlaw.com)

*Counsel for Defendants Brian McGivern, Chief  
Chuck Colucci, Officer Timothy Lamping, Sergeant  
Scott Weamer and City of Canfield*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2015, a copy of the foregoing Motion for Summary Judgment of Defendants was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*s/Tami Z. Hannon*

\_\_\_\_\_  
JOHN T. MCLANDRICH (0021494)

TAMI Z. HANNON (0079812)

*Counsel for Defendants Brian McGivern, Chief  
Chuck Colucci, Officer Timothy Lamping, Sergeant  
Scott Weamer and City of Canfield*

TRID-130105/MSJ of Ds